

Waterboarding, Interrogation vs. Torture
EWS Contemporary Issue Paper
Submitted by Captain Jeffery S. Nason
to
Major G.A. Thiele, CG 2
18 December 2007

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 18 DEC 2007		2. REPORT TYPE		3. DATES COVERED 00-00-2007 to 00-00-2007	
4. TITLE AND SUBTITLE Waterboarding, Interrogation vs. Torture				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) United States Marine Corps, Command and Staff College, Marine Corps Combat Development, Marine Corps University, 2076 South Street, Quantico, VA, 22134-5068				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 12	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

For centuries "waterboarding" has been used for interrogation purposes to gain vital information forcefully and also to punish prisoners.¹ Most recently, waterboarding gained negative attention when the press reported its use by the United States government on alleged terrorists. Today it is considered to be torture by a wide range of authorities, including politicians and military judges. Hence, the U.S. government should cease using "waterboarding" as an interrogation technique because it is a form of torture, places U.S. troops at risk, and violates the Geneva Convention.²

¹ From the article about the Spanish Inquisition (1478-1834), a form of torture similar to waterboarding called *toca* was used during the trial portion of the Spanish Inquisition process. Quoting from the article: The *toca*, also called *tortura del agua*, consisted of introducing a cloth into the mouth of the victims, forcing them to ingest water spilled from a jar so that they had the impression of drowning.

² Geneva Convention relative to the Treatment of Prisoners of War. Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949. Entry into force 21 October 1950.

Waterboarding Is Torture

Waterboarding is a form of torture that consists of immobilizing a person on his or her back, with the head inclined downward, and pouring water over the face and into the breathing passages.³ Through forced suffocation and inhalation of water, the sufferer experiences the process of drowning in a controlled environment and is made to believe that death is imminent.⁴ In contrast to submerging the head face-forward, waterboarding almost immediately elicits the gag reflex.

Imagine that you are restrained on a board as an interrogation subject. The board is inclined about 15-20 degrees so that your feet are above your head. A plastic wrap is placed over your mouth but not the eyes or nose to prevent water from escaping your throat and sinuses. Water is poured onto your inclined face so that it runs into the upturned mouth and nose. The water stays in the head, filling the throat, mouth and sinuses. Your entire upper respiratory system from your sinuses to trachea feels like it is filled with water, simulating drowning. Your sufferings must be that of a person who is drowning, but you cannot drown.⁵

³ Eban, Katherine. "Eban, Katherine. "Rorschach and Awe", Vanity Fair, July 17, 2007. "It was terrifying,...you're strapped to an inclined gurney and you're in four-point restraint, your head is almost immobilized, and they pour water between your nose and your mouth, so if you're likely to breathe, you're going to get a lot of water. You go into an oxygen panic."

⁴ White, Josh. "Waterboarding Is Torture, Says Ex-Navy Instructor", Washington Post, November 8, 2007. "As the event unfolded, I was fully conscious of what was happening: I was being tortured."

⁵ ABC News Report, (2004). "His sufferings must be that of a man who is drowning, but cannot drown."

Although waterboarding can be performed in ways that leave no lasting physical damage, it carries the real risks of extreme pain, damage to the lungs, brain damage caused by oxygen deprivation, injuries (including broken bones) due to struggling against restraints, and even death. The psychological effects on victims of waterboarding can last for years after the procedure.⁶

Today, waterboarding is considered to be torture by a wide range of authorities, including legal experts such as Benjamin Davis, politicians such as former President Carter, war veterans such as United States Senator John McCain, intelligence officials such as a former senior CIA official, military judges such as Rear Admiral Donald Guter, Major General John Fugh and Brigadier General David Brahms, and human rights organizations such as Amnesty International USA and Human Rights Watch.

In an article by Julia Layton for HowStuffWorks' website, she explains how Attorney General Nominee Michael Mukasey addresses the issue of waterboarding.

⁶ Allen Keller, the director of the Bellevue/N.Y.U. Program for Survivors of Torture, told me that he had treated a number of people who had been subjected to such forms of near-asphyxiation, and he argued that it was indeed torture. Some victims were still traumatized years later, he said." Mayer, Jane (February 7 2005). "Outsourcing Torture". *The New Yorker*.

In October 2007, Attorney General Nominee Michael Mukasey drew criticism for his refusal to characterize waterboarding, a controversial interrogation technique considered by many to be illegal, as torture. Mukasey, a retired federal judge nominated by President Bush, dodged the question in his confirmation hearing by the Senate Judiciary Committee, stating that "if waterboarding amounts to torture, it is not constitutional," but never explicitly condemning it. His response prompted several senators on the committee to declare that they would oppose Mukasey's nomination as Attorney General unless he denounces waterboarding as a form of torture.

There is a lot of pressure placed on U.S. government officials. Who knew that being nominated as Attorney General would rely on whether or not you oppose waterboarding. Mukasey definitely has a hard decision to face in order to become Attorney General or not.

Waterboarding Technique Violates the Geneva Convention

Waterboarding has been used in interrogations dating back to the Spanish Inquisition. It has been used for interrogation purposes, to obtain information, coerce confessions, punish, and intimidate prisoners of war. In 2005, the waterboarding technique was characterized by former Central Intelligence Agency (CIA) director Porter J. Goss as a "professional interrogation technique".⁷

⁷ Human Rights Watch, CIA Whitewashing Torture: Statements by Goss Contradict U.S. Law and Practice, November 21, 2005.

The Geneva Convention is very clear that it does not support waterboarding as a "professional interrogation technique." The Geneva Convention states that "in the case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to apply, as a minimum, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely,..." clearly the Geneva Convention prohibits waterboarding.

To this end, the following act is and shall remain prohibited at any time and in any place whatsoever, with respect to the above-mentioned persons, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture. An emphasis is placed on the word torture. Without any doubt, waterboarding is torture and it plainly is apparent that it is a violation of the Geneva Convention.

Troops at Risk

Waterboarding can place U.S. troops at risk. While waterboarding is considered a torture technique used on people who oppose the United States, it can also be used against the people of the United States. If the U.S. continues to drown terrorists by utilizing waterboarding, then terrorists will

reciprocate by torturing U.S. troops upon capturing them. The most important thing to remember about waterboarding is that it can eventually lead to the victim's death.

Enemies of the U.S. may consider waterboarding an interrogation technique that is allowed and use it to torture and kill U.S. troops. In order to mitigate the risk of U.S. troop's suffering, waterboarding must be immediately eliminated as a interrogation technique.

Counterargument

Waterboarding gained recent attention and notoriety in the United States when the press reported that the CIA had used waterboarding in the interrogation of certain extrajudicial prisoners and that the Justice Department had authorized this procedure. The new controversy surrounded the confirmed use of waterboarding by the United States government on alleged terrorists, and whether the practice was acceptable.

Others believe that waterboarding is not a form of torture. In the United States, several American conservative media commentators have stated that they do not believe that waterboarding should be classified as a form of torture and/or that waterboarding is justified in certain circumstances (under United States local domestic law).⁸

⁸ NewsMax article: U.S. special forces are subjected to waterboarding as part of their training in case they are captured and experience the procedure.

Andrew McCarthy, a licensed attorney and former federal prosecutor, stated in an article that he believes that in "some number of instances that were not prolonged or extensive" that waterboarding should not qualify as torture under the law. McCarthy stated in his article that: "Reasonable minds can and do differ on this. Personally, I don't believe it qualifies. It is not in the nature of the barbarous sadism universally condemned as torture, an ignominy the law, as we've seen, has been patently careful not to trivialize or conflate with lesser evils."

Several accounts reported that terrorist Khalid Sheikh Mohammed was waterboarded while being interrogated by the CIA. According to the Bush Administration, Mohammed divulged information of tremendous value during his detention. In fact, he is said to have helped point the way to the capture of Hambali, the Indonesian terrorist responsible for the 2002 bombings of night clubs in Bali.

According to the Bush Administration, he also provided information on an Al Qaeda leader in England. During a radio interview on 24 October 2006, with Scott Hennen of radio station WDAY, Vice President Dick Cheney seemed to agree with the use of waterboarding. The following are the questions and answers at issue, excerpted from the White House transcript of the interview:

Hennen: ...And I've had people call and say, please, let the Vice President know that if it takes dunking a terrorist in water, we're all for it, if it saves American lives. Again, this debate seems a little silly given the threat we face, would you agree?

Cheney: I do agree. And I think the terrorist threat, for example, with respect to our ability to interrogate high value detainees like Khalid Sheikh Mohammed, that's been a very important tool that we've had to be able to secure the nation. Khalid Sheikh Mohammed provided us with enormously valuable information about how many there are, about how they plan, what their training processes are and so forth, we've learned a lot. We need to be able to continue that.

...

Hennen: Would you agree a dunk in water is a no-brainer if it can save lives?

Cheney: Well, it's a no-brainer for me, but for a while there I was criticized as being the vice president for torture. We don't torture. That's not what we're involved in.

"Waterboarding works," the former officer said. "Drowning is a baseline fear. So is falling. People dream about it. It's human nature. Suffocation is a very scary thing. When you're waterboarded, you're inverted, so it exacerbates the fear. It's not painful, but it scares the shit out of you." (The former officer was waterboarded himself in a training course.) After being subjected to waterboarding, Khalid Sheikh Mohammed claimed involvement in thirty-one terrorist plots.

Conclusion

The U.S. government should cease using "waterboarding" as an interrogation technique because it is a form of torture, places U.S. troops at risk, and violates the Geneva Convention. Since it is a form of torture and torture is unlawful according

to the Geneva Convention, there is only one thing to do and that is to stop using waterboarding as an interrogation technique.

Bibliography

ABC News Report. "His sufferings must be that of a man who is drowning, but cannot drown."—Lt. Grover Flint, Philippine-American War. 30 Dec, 2004. URL:<<http://waterboarding.org>>. Accessed 21 November 2007.

Allen Keller, the director of the Bellevue/N.Y.U. Program for Survivors of Torture, told me that he had treated a number of people who had been subjected to such forms of near-asphyxiation, and he argued that it was indeed torture. Some victims were still traumatized years later, he said." Mayer, Jane (February 7 2005). "Outsourcing Torture". *The New Yorker*.

Benjamin Davis. Endgame on Torture: Time to Call the Bluff. "Waterboarding has been torture for at least 500 years. All of us know that torture is going on."

Brian Ross and Richard Esposito, "CIA's Harsh Interrogation Techniques Described," ABC News, Nov. 8, 2005. The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner's face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.

Carter says U.S. tortures prisoners, CNN, October 10, 2007. "The United States tortures prisoners in violation of international law, former President Carter said Wednesday. 'I don't think it. I know it,' Carter told CNN's Wolf Blitzer."

Eban, Katherine. "Rorschach and Awe", Vanity Fair, July 17, 2007. Retrieved on 2007-12-17. "It was terrifying," military psychologist Bryce Lefever is quoted as saying, "...you're strapped to an inclined gurney and you're in four-point restraint, your head is almost immobilized, and they pour water between your nose and your mouth, so if you're likely to breathe, you're going to get a lot of water. You go into an oxygen panic."

Human Rights Watch, CIA Whitewashing Torture: Statements by Goss Contradict U.S. Law and Practice, November 21, 2005.

Jelinek, P. (September 6 2006). "Army Bans Some Interrogation Techniques". *Associated Press*.

Kaj Larsen, "Getting Waterboarded." Current TV segment.
<http://current.com/pods/controversy/PD04399>. Retrieved Oct. 26, 2007.

Michael Hirsh, John Barry and Daniel Klaidman "A Tortured Debate," *Newsweek*, June 21, 2004. "'water-boarding,' or dripping water into a wet cloth over a suspect's face, which can feel like drowning"

Office of the High Commissioner for Human Rights. Geneva Convention relative to the Treatment of Prisoners of War. 21 Oct, 1950.
 URL:<<http://www.unhchr.ch/html/menu3/b/91.htm>>. Accessed 21 November 2007.

Pincus, Walter, "Waterboarding Historically Controversial; In 1947, the U.S. Called It a War Crime; in 1968, It Reportedly Caused an Investigation" *Washington Post*, October 5, 2006, pg. A17. viewed October 5, 2006.

Ross, Brian; Richard Esposito (May 19 2006). "CIA's Harsh Interrogation Techniques Described". *abcnews.go.com*.

Sidhu, H. *The Bamboo Fortress: True Singapore War Stories* (Native, 1991, 113), a paraphrase of testimony presented during the Double Tenth war crimes trial. Some of this testimony has been transcribed and posted at Yawning Bread.

Waterboarding: Historically Controversial. FOX News segment by Steve Harrigan, 11:52am November 6 2006. Transcript and video at
<http://www.foxnews.com/story/0,2933,227357,00.html>. Retrieved on Oct. 26, 2007.

White, Josh. "Waterboarding Is Torture, Says Ex-Navy Instructor", *Washington Post*, November 8, 2007. Retrieved on 2007-12-17. "As the event unfolded, I was fully conscious of what was happening: I was being tortured."